

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 2**

**Glen Orne Leasing, Inc.**<sup>1</sup>  
Employer

- and -

**Case No. 2-RC-22712**

**Local Union No. 445, International  
Brotherhood of Teamsters, AFL-CIO**  
Petitioner

**DECISION AND DIRECTION OF ELECTION**

Webster Trucking Corporation (Webster) is a trucking company engaged in interstate commerce. Webster leases its employees from Glen Orne Leasing, Inc., herein the Employer. The Petitioner filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all truck drivers employed at Webster's facility located at 1500 Corporate Boulevard, Newburgh, New York 12510.

Upon a petition filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before Nancy Slahetka, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2.

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<sup>1</sup> The name of the Employer was corrected on the record at the outset of the hearing.

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. At the hearing, Local Union No. 445, International Brotherhood of Teamsters, AFL-CIO, herein the Petitioner, amended its petition to accurately reflect Glen Orne Leasing, Inc., as the Employer.

The parties stipulated and I find that Glen Orne Leasing, Inc., ("the Employer"), a Vermont corporation with an office and principle place of business located at 1500 Corporate Boulevard, Newburgh, NY, is engaged in the business of transporting food products. Annually, in the course and conduct of its operations, the Employer performs services in excess of \$50,000, directly to suppliers located outside the State of New York.

Accordingly, I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The parties stipulated and I find that Local Union No. 445, International Brotherhood of Teamsters, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

5. In its petition, Petitioner seeks to represent all truck drivers at the Employer's 1500 Corporate Boulevard location, excluding all supervisors and guards as defined in the Act. At the commencement of the hearing, Petitioner amended its petition to include all full-time and regular part-time truck drivers and yardmen; but excluding all owner/ operator drivers, supervisors and guards as defined in the Act. After the close of the hearing, the parties stipulated that the owner/operator drivers should be excluded from the unit.

As evidenced at the hearing and in the briefs, the parties disagree on the classifications included in an appropriate unit. The Employer contends that the appropriate unit should include the drivers, the yardmen, the dispatchers, the transportation clerks and the safety trainer. Petitioner, contrary to the Employer, asserts that the appropriate unit is comprised of the drivers and the yardmen.

I have considered the evidence and the arguments presented by the parties on each of these related issues. As discussed below, I find that the petitioned-for unit is an appropriate unit for the purposes of collective bargaining.

To provide a context for my discussion of those issues, I will first provide an overview of the Employer's operations. Then, I will present in detail the facts and reasoning that supports each of my conclusions on the issues.

### **I. Overview of Operations**

The record establishes that the Employer leases drivers to Webster at its terminal located in Newburgh. Webster operates 6 or 7 facilities in the Northeast. The drivers at the Newburgh facility deliver groceries in the New York and New Jersey area for C&S Wholesale Grocers ("C & S"), whose main customers are Stop

& Shop and Key Food. The drivers' terminal is part of the warehouse. The Employer's Terminal Manager, Jonathan Binney, supervises the day-to day operations of the terminal. Approximately 60 employee drivers,<sup>2</sup> 40 owner/operator drivers, 15 yardmen, five dispatch employees, four transportation clerks and one safety trainer report to Binney.

With the exception of part-time drivers, all of the employees receive the same fringe benefits, such as, health insurance, dental and vision plans, life insurance, disability insurance, paid holidays, personal days, sick days, birthday off, bereavement pay, 401K plan and well-child plan, prescription plan and \$300 insurance deductible for the birth of a child. Similarly, all of the employees are invited to attend the annual cook out, the "Six Flags" amusement park outing and the children's party. A Christmas turkey is given to all of the employees as a holiday gift. Finally, all of the employees share the same rest rooms, cafeteria and parking areas.

All of the employees are paid hourly, except Terminal Manager Binney and the Safety Manager Don Adams. The drivers are paid by the mile and receive an adjustment in their rate of pay based on seniority with the company. The range for drivers pay is between \$600 and \$1,000 per week. The range for dispatchers is from \$600 to \$900. The safety trainer earns about \$600 per week. No record evidence was presented regarding the pay scale for the transportation clerks or the yardmen.

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<sup>2</sup> Of whom about eight are part-time employees who primarily work on the weekends. The parties stipulated that the *Davison Paxton* part-time eligibility formula will be applied in

The Employer utilizes an identical job application form for all classifications of employees, even though the language on the form appears to be geared toward drivers. While the application process is the same, only the drivers participate in a daylong orientation session.

Upon hire, the employees receive the same employee handbook and are subject to the same system of progressive discipline. Normally, there is a verbal warning, then a written warning and it can lead to termination. The Employer uses the same disciplinary forms for all of the employees. The record evidence shows that the Employer issued counseling forms to drivers and transportation clerks.

There have been several instances of transfers between certain classifications. Ryan Freighly, previously worked as a dispatcher, and is presently working as a yardman. Eric Catronio is currently a driver, but previously served as a dispatcher. James Young is a yardman who was formerly a driver and occasionally performed work as a transportation clerk. Kevin Stack was originally hired as a driver and transferred to dispatching in early 2003.

## **II. Employee Classifications**

### *A. Drivers*

The drivers perform runs from the Newburgh terminal to C & S customers on routes designed by C & S. The full-time drivers work more than 30 hours a week and Binney assigns their days off. All of the drivers have a CLD license and are subject to random drug testing by the Employer. The drivers are required to maintain a log of DOT hours of service regulations. Failure to maintain a log is

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this case.

grounds for termination. Most of the driver's shift is spent driving a tractor trailer and away from the warehouse facility. The drivers interaction with the dispatchers and the transportation clerks is more fully discussed below.

### *B. Yardmen*

The yardmen use a "yard horse", which is similar to a tractor, but it has a hydraulic lift. The Yard horse is used to shuttle trailers around the yard and dock trailers at the shipping door. The yardmen sign in with dispatch receive their assignments from Binney. The yardmen interact with the dispatchers and transportation clerks several times each day. The dispatchers/transportation clerks confirm the information set forth on the "daily yard check summary form" which is completed by the yardmen. This is to insure that the information entered into the computer matches the actual location of the trailers, as set forth on the summary form. Where discrepancies between the computer log and yard check summaries arise, the yardman physically reconfirms the information that he obtained on his initial yard check. The yard check summaries are submitted to the transportation clerk/dispatchers and then distributed in the warehouse after they are reviewed by Binney.

Some of the yardmen are DOT qualified which means that they have a CDL license. Those that are DOT qualified also receive random drug tests like the drivers.

### *C. Dispatchers*

The drivers call the dispatchers each morning to find out their start time. There are five dispatchers who assign routes to the drivers that are devised by

C&S. The assignment process appears to be routine in nature. Pete Teresi, the dispatcher who is mainly responsible for the assignments, merely follows the guidelines that Binney has established. The guidelines are based on equality and fairness of mileage. Binney strives for parity among the drivers and in that regard, reviews all assignments prior to distribution to the drivers.

The dispatchers are responsible for giving the paperwork and the load information to the driver. If it is an employee driver, the dispatcher also gives him the keys to the tractor. The paperwork consists of a manifest, an invoice, a load sheet, a vehicle inspection report and a tractor inspection report. Discussion between the driver and the dispatcher occurs only if there is some unusual event, such as a special pick up. The drivers are required to call the dispatchers if a breakdown occurs on the road and at the end of their last stop.

Drivers turn in their keys and paperwork to either the dispatchers or the transportation clerks upon their return to the terminal. The dispatcher reviews the documents provided to him or her by the driver in order to make sure that the forms are properly completed. Specifically, the dispatcher checks that there are no discrepancies in the manifest, that the driver has appropriately dealt with any returned product and that the trip sheet is filled out with the mileage set forth. The dispatchers also review any tractor maintenance issues and make sure they are highlighted and repaired as required. They also review the driver's load report and may discuss if it was not a good quality load for which the warehouse is responsible.

Dispatchers are required to make a certain observations regarding the driver's behavior every week pursuant to the Employer's MAPS program (Management Accountability and Process of Safety). In order to make these observations, dispatchers enter the driving area two to three times a week. They then fill out an observation form and submit it to Binney. The program is not designed to be disciplinary in any fashion. Rather, it was designed to raise safety awareness. The dispatchers share their observations of the driver's behavior, positive or negative, with the driver. The dispatchers, however, are not authorized to discipline the drivers or any other employees. The authority to discipline rests with Binney and to some extent, the Safety Manager, who can issue discipline based on safety violations or DOT violations. The power to adjust grievances, grant days off, make vacation selections, grant promotions or pay raises, require overtime, as well as, hiring and firing decisions rests exclusively with Binney.

Dispatchers and transportation clerks work in the same cubicle in the terminal. Communication between dispatchers/transportation clerks and drivers takes place through a window between the dispatcher's cubicle and the driver's waiting area. Drivers pass through the driver's area into the dispatch office about 10-15 times a day on an average.

#### *D. Transportation Clerks*

The transportation clerks gather paperwork generated by C & S and make it available for the dispatchers to give to the drivers. At times, they process the drivers themselves when the driver returns to the facility by reviewing their paperwork and collecting the keys, as discussed above. However, the interaction of



the transportation clerks with the drivers is very limited. The transportation clerks conduct a computer check to make sure all the equipment was returned and has been accounted for in the system by reconciling the paperwork and the information that was inputted into the computer.

As there are no secretarial employees employed at the facility, the clerical work is done by those employees in the office. While dispatchers and transportation clerks perform similar work, transportation clerks have more responsibility for handling the paperwork than dispatchers whose responsibilities involve the handling of equipment by ensuring it is available and functional. Neither dispatchers nor transportation clerks perform drive the Employer trucks.

#### *E. Safety Trainer*

As the safety trainer, Linward Burke is responsible for the Employer's orientation program for new hires. He also occasionally works as a driver. During the last several months, Burke worked on average once a week as a driver. He also assists the Safety Manager with processing paperwork and updating files. His office is located in the dispatch area. He earns about \$600 per week. Burke conducts orientations for employees at both the Newburgh and Chester facilities because the program combines both groups of employees.

#### *F. Special Cases*

Isaac Boguchi is a driver who also serves as a yardman. He drives about once a week and spends about two days in the yard. He also serves as a dispatcher by covering a 12-hour shift on Saturday nights. He works in addition to the five dispatchers previously mentioned.

Similarly, Mike Doring is a yardman who also covers a 12-hour dispatch shift on Sunday night. He also performs transportation clerical functions. Doring spends one day a week in the office and four days a week in the yard. Doring is not one of the five dispatchers previously mentioned.

### **III. Analysis**

It is well established that a petitioned-for unit need only be an appropriate unit, not the most appropriate unit. *Morand Bros. Beverage*, 91 NLRB 409 (1950), *enfd.* 190 F.2d 576 (7<sup>th</sup> Cir. 1951). The Board's task, therefore, is to determine whether the petitioned-for unit is an appropriate unit, even though it may not be the only appropriate unit or the ultimate unit. In making unit determinations, the Board first looks to the unit sought by the petitioner. If it is appropriate, the inquiry ends and the Board does not evaluate any competing unit contentions. If, however, the unit is inappropriate, the Board will scrutinize the employer's proposal. *Dezcon, Inc.*, 295 NLRB 109 (1989). In assessing the appropriateness of any proposed unit, the Board considers community of interest factors, such as employee skills and functions, the degree of functional integration, interchangeability and contact among employees, and whether the employees have common supervision, work sites.

I find, based upon the record herein, that the petitioned-for unit of drivers and yardmen is an appropriate unit. The drivers and yardmen are both engaged in transportation of C&S's product, while the excluded employees are primarily involved in office work, such as processing paperwork. While drivers spend most of their time driving to other sites to make the deliveries, it appears that yardmen also operate vehicles. Thus these positions both require specialized skills. It appears

that the yardmen operate a yard horse, which was described on the record as being similar to a tractor. Some yardmen also possess a commercial drivers license that is required for the drivers. Based on the record there appears to be a substantial integration in the duties of the yardmen and the drivers. On the contrary, neither dispatchers nor transportation clerks or the safety trainer require any licenses or certifications and none of these employees are subject to random drug testing, as are the drivers.

The Employer contends that the drivers and yardmen must be included on a unit with the dispatchers and transportation clerks. However, the evidence does not support a finding that the drivers and yardmen have such a strong community of interest with these other classifications that the petitioned-for unit cannot stand as a separate appropriate bargaining unit. *Standard Oil Co.*, 147 NLRB 1226 (1964). The contact between the drivers and the dispatchers/transportation clerks is very limited both as to duration and the manner of contact. The limited contact takes place at a dispatch office window for a very short amount of time. While approximately six employees have transferred between these classifications, this interchange is extremely limited, particularly in the context of the size of the drivers unit.

The Board in *Lonergan Corp.*, 194 NLRB 742, 743 (1972), noted that in many cases involving whether truck drivers should be included or excluded from a unit with other classifications of employees, truck drivers may have what amounts to a dual community of interest with some factors supporting their exclusion from an overall production and maintenance unit and some factors supporting their inclusion

in the broader unit. In the instant case, there are some factors that might support a broader unit, such as similarity in their fringe benefits, some common supervision and the application of the same employee handbook. However, in my view, the drivers and yardmen are involved in the integrated operation of the movement of the goods, while the employees sought by the Employer to be included perform a completely separate job function. The Board in *Home Depot USA*, 331 NLRB 1289 (2000), noted that drivers have a separate community of interest from other employees in that employer's special services department. In *Home Depot*, the Board excluded the employer's phone sales associates, special services associates and pullers<sup>3</sup> from the drivers' unit despite their common benefits, training, similarity of work rules, facilities and supervision. In finding the drivers constituted a separate appropriate unit, the Board noted that the drivers required a commercial drivers' license, DOT certification, and were periodically drug tested. Here, the yardmen and drivers are functionally integrated and possess a separate community of interest from the office employees employed by the Employer and the Employer has failed to establish that the unit they propose would constitute the only appropriate unit.

Accordingly, I therefore find that the following constitutes a unit that is appropriate for the purposes of collective bargaining:

Included: All full-time and regular part-time<sup>4</sup> drivers and yardmen employed by the Employer at the Newburgh, New York facility;

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<sup>3</sup> The pullers, who took the merchandise from the shelves to be delivered by the drivers, worked during the night hours and left when the drivers arrived.

<sup>4</sup> The parties stipulated that the part-time employees would be eligible to vote pursuant to the *Davison Paxon* formula. In that regard, the record shows that approximately eight of

Excluded: All other employees, including owner/operator drivers, and guards, professional employees, and supervisors as defined in the Act.

### **Direction of Election**

An election by secret ballot shall be conducted by the Regional Director, Region 2, among the employees in the unit found appropriate at the time<sup>5</sup> and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and regulations.<sup>6</sup> Eligible to vote are those in the unit who were employed for an average of four hours per week during the calendar quarter immediately preceding the date of this Decision, including employees who did not work during the period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such a strike who have retained their status as strikers, but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military service of the United States who are in the unit may vote if

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the 60 employee drivers work on weekends and receive the same training and orientation as the full-time employees.

<sup>5</sup> Pursuant to Section 101.21 of the Board's Statements of Procedure, absent waiver, an election will normally be scheduled for a date or dates between the 25<sup>th</sup> and 30<sup>th</sup> day after the date of this decision.

<sup>6</sup> Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer "at least 3 full working days prior to 12:01 a.m. of the day of the election." Section 103.20(1) of the Board's Rules. In addition, please be advised that the Board has held Section 103.20(c) of the Board's Rules. In addition, please be advised that the Board has held Section 103.20(c) of the Board's Rules requires that the Employer notify the Regional Office at least five full working days prior to 12:01 a.m. of the day of the election, if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995).

they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated eligibility period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.<sup>7</sup> Those eligible shall vote on

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<sup>7</sup> In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *North Macon Health Care Facility*, 315 NLRB 359 (1994); *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, three copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director, Region 2, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office at the address below, on or before **June 9, 2003**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list, except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

whether or not they desire to be represented for collective bargaining purposes by

Local Union No. 445, International Brotherhood of Teamsters, AFL-CIO.<sup>8</sup>

Date at New York, New York

This 2nd day of June 2003

(s) Celeste J. Mattina

Celeste J. Mattina  
Regional Director, Region 2  
National Labor Relations Board  
26 Federal Plaza, Room 3614  
New York, New York 10278

Code: 440-1760-6200

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<sup>8</sup> Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14<sup>th</sup> Street, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by no later than **June 16, 2003**.